

STATE OF MICHIGAN
IN THE SUPREME COURT

IN THE MATTER OF:

Supreme Court No. 152595

JJ, RJ AND GJ, Minors

Court of Appeals No. 326252

LAURA JONES,

Ontonagon County Circuit Court
No. 2013-000013-NA

Plaintiff-Appellant,

v

MICHIGAN DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Defendant-Appellee.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES' (DHHS)
BRIEF IN OPPOSITION TO
LAURA JONES' APPLICATION FOR LEAVE TO APPEAL**

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. A court may enter a dispositional order when it obtains jurisdiction over the appellant. Here, the court obtained jurisdiction over Jones based on her admissions of wrongdoing, and an initial dispositional order was entered in December 2013. Jones did not appeal that order. Should this Court grant leave when the Court of Appeals correctly held that the court had jurisdiction over Jones?

Appellant's answer: Yes.

Appellee's answer: No.

Trial court's answer: Issue never raised by Jones in trial court

Court of Appeals' answer: No.

2. This Court in *Hatcher* held that the exercise of jurisdiction can only be challenged on direct appeal. Here, the court exercised its jurisdiction and entered a dispositional order against Jones and she did not appeal, although a direct appeal was available to her. Should this Court grant leave when the Court of Appeals correctly held that Jones was precluded from challenging jurisdiction because she had a direct appeal available?

Appellant's answer: Yes.

Appellee's answer: No.

Trial court's answer: Issue never raised by Jones in trial court

Court of Appeals' answer: No.

STATUTE INVOLVED

MCL 712A.2(b) provides:

Sec. 2. The court has the following authority and jurisdiction:

* * *

(b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. As used in this subdivision:

(A) "Education" means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

(B) "Without proper custody or guardianship" does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance.

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in. * * *

**COUNTER-STATEMENT OF JUDGMENT /
ORDER APPEALED FROM AND RELIEF SOUGHT**

Appellant Laura Jones' seeks leave to appeal an October 27, 2015 decision of the Court of Appeals which concluded that an error in the exercise of jurisdiction may be challenged in a direct appeal, but may not be challenged years later in a collateral attack. (*In re Jones* Court of Appeals decision, No. 326252, dated October 27, 2015.) For the first time on appeal, Jones challenged the trial court's exercise of jurisdiction over her children. The Court of Appeals rejected Jones' argument and affirmed the trial court's exercise of jurisdiction, holding that she was precluded from collaterally challenging the court's exercise of jurisdiction because she had direct appeal available to her. The Court of Appeals, however, remanded the matter to the trial court to consider in its best-interest determination the option of continuing placement of the children with Jones' aunt and uncle. Now, Jones seeks leave to appeal requesting this Court reverse the appellate decision, challenging *In re Hatcher*, and requesting that the matter be remanded to the trial court for a new adjudication trial.

REASONS FOR DENYING THE APPLICATION

The purpose of the Juvenile Code is to protect children from unfit homes. Jones and her children, JJ, RJ, and GJ, had been monitored off and on by the Department since 2008, and by three counties no less—Gogebic, Chippewa, and Ontonagon. Since her daughters' birth, the children have fluctuated from one tumultuous situation to the next because Jones has failed to address her mental illness, lack of parenting skills, and abusive behavior. Over the past seven years, Jones has received both voluntary and court-ordered voluntary and preventative removal services from the Department. Despite receiving a multitude of services, Jones has never been able to maintain a stable or safe home environment for her children for any extensive period of time. As a result, her children have struggled—and suffered.

Due to Jones' refusal to address her mental illness, her chronic environmental instability and her habitual acts of violence directed toward her children, her daughters display psychological, developmental, educational, emotional and behavioral problems, including night-terrors, violent tantrums including severe crying and screaming episodes, and regression to bed-wetting. The true tragedy of what RJ and GJ have endured since their birth is that in their young lives, they have never known security, structure, or stability.

Jones filed her application for leave with this Court because she was unable to successfully resolve the issues bringing her children to the Department's attention. This resulted in the Department obtaining permanency for the children. She *now* wants to challenge the jurisdictional decision, *two years later*, although she

failed to file a direct appeal when it was available to her. See MCR 3.993(A)(1) and MCR 7.203(A); also see Appendix A.

This Court should reject Jones' request to undo well-established precedence that, where a direct appeal is available, a respondent may not challenge a trial court's jurisdictional decision years later in a collateral attack. The application should be denied because Jones cites no legal authority to collaterally attack the trial court's jurisdiction when she indisputably had a direct appeal available to her by way of the December 2013 order of disposition. See MCR 3.993(A)(1). Further, Jones' application does not satisfy any of the grounds for application for leave:

- The issues do not involve a substantial question as to the validity of a legislative act.
- Although the case involves a state agency, the application does not present issues of significant public interest. Rather, it is a standard case challenging the court's assumption of jurisdiction over children who have been neglected and abused.
- The issues do not involve legal principles of major significance to the state's jurisprudence.
- The Court of Appeals decision is not clearly erroneous; to the contrary, it is correct and in accord with binding precedent. See MCR 7.302(B)

For these reasons, this Court should deny Jones' application for leave to appeal and dismiss this case and provide permanency for those children.

COUNTER-STATEMENT OF FACTS

A. Jones has a lengthy history with the Department.

As far back as 2008, Jones began receiving services and had been monitored by the Department—in three counties—Gogebic, Ontonagon and Chippewa.

In 2008, Gogebic Child Protective Services received its first complaint about Jones. The complaint indicated her son JJ was being neglected and that Jones was smoking “pot” in front of him and had “shoved him into a wall.” (Opinion Granting/Denying Petition to Terminate Parental Rights, filed February 16, 2015.) Jones was offered preventative removal services in September 2008. (*Id.*) Those services were later terminated at Jones’ request. (*Id.*)

Not long after those services had been terminated, in early 2009, an Ironwood Public Safety Department sergeant received a complaint about Jones’ home. That sergeant found then three-year-old JJ home alone. (*Id.*) JJ was able to show the sergeant that a man was hiding in the attic of his house. The man who was hiding turned out to have an outstanding felony warrant and was under the influence of marijuana. He informed the sergeant that he was hiding from Milwaukee drug dealers who were after him. (*Id.*)

Jones was later questioned about the man. She admitted that she left JJ with the man while she went shopping with her sister. Child Protective Services went to the home and observed razors and knives that JJ could reach were in the home. The home was described as “filthy and there was no food.” (*Id.*) The court assumed jurisdiction over JJ who was sent to live with his grandmother for a time. Jones received more rehabilitative services.

Jones was referred to the Families First program on two separate occasions—on January 6, 2009, and April 16, 2009. Jones signed a voluntary placement agreement with the Gogebic County Department of Health of Human Services from May 8, 2009, until May 18, 2009, placing JJ in foster care. In June 2009, Jones moved. She began living with persons the Department believed appropriate to care for JJ. As a result, Child Protective Services closed its case file and court jurisdiction was terminated.

The Department continued to monitor Jones after the births of RJ and GJ—and provided her more services in Gogebic and Ontonagon Counties before she moved with the children to Chippewa County.¹ The Gogebic County Department provided her in-home prevention services on two separate occasions: from October 28, 2010, until December 7, 2010 and from March 7, 2012, until June 19, 2012.

In 2012, Child Protective Services received more complaints about Jones' conduct towards the children. The complaints centered on Jones' emotional state and how she was disciplining the children. Reports were that Jones would yell or scream at the children, grab them, and restrain them. (*Id.*) Child Protective Services *once again* began to monitor Jones. (*Id.*)

During this period, the Child Protective Services workers reported that *while they were monitoring* Jones, she would grab one of her daughters by the arm and use her foot in a kicking motion to flip the child over. Jones would experience

¹ From 2008 through 2014, the Department of Health and Human Services in Ontonagon County, Gogebic County, and Chippewa County, received 20 Child Protective Services complaints regarding Jones. See Petition dated October 16, 2014.

periods of improvement in her parenting skills, only to suffer relapses in the way she treated and disciplined her children. She would also irrationally refuse basic assistance from a parenting aide, while complaining that she felt overwhelmed.

(Id.)

In November 2012, another Child Protective Services case was opened due to concerns of physical neglect and Jones relocating her children to live with a registered sex offender. *(Id.)* The Department concluded that the children were once again being neglected. Jones was offered preventative removal services under another voluntary service agreement. Services provided to her included a parent aide, psychological evaluation, counseling services, and an in-home program worker for child development. Jones, however, continued to refuse Early On services for child development. *(Id.)*

From December 2012 until August 2013, the Department provided additional in-home services to Jones to correct the neglect and concerns for abusive parenting. This time, she was given outreach counseling, more parenting aide services, and employment referrals. *(Id.)* Despite receiving services, Jones continued to exhibit poor parenting skills and a lack of insight into her abusive behavior. Jones refused Department services to address her mental health. Still, the Department sought to assist her rather than remove the children.

But, in May or June 2013, Jones was observed telling the children in the presence of a Department worker, "If you don't go away I'll hurt you." *(Id.)* Jones

additionally told the same worker, “Everything in my body tells me I just want to go ‘wap, wap, wap’” (making a punching gesture). (*Id.*)

By this point, JJ’s school performance was poor. He was “significantly below” what his developmental skill level should have been. (*Id.*) His school attendance was poor because Jones did not get him ready for the school bus on time. (*Id.*) JJ was held back a year by the time he was age eight. (*Id.*)

Similarly, RJ had educational difficulties in Jones’ care. Although she was attending Head Start, she struggled “due to lack of a routine, structure and spotty attendance.” (*Id.*)

GJ was non-verbal at age two. The Child Protective Services worker reported that Jones would not accept Early On services for her, claiming that she was “just fine.” (*Id.*)

In August 2013, Child Protective Services received another complaint. Jones had left her children unattended at Bond Falls Lake campsite. (*Id.*) A five-year-old who was with Jones’ children “claimed that she nearly drowned but was pulled from the deep water by JJ.” (*Id.*) JJ reported that he was burned on his arm from adding wood to the burning fire pit. GJ had a red mark on her eye that JJ explained by saying, “Mom got GJ good.” (*Id.*) Jones had also grabbed RJ by the hair as punishment for going too close to the public road. It was so severe, Jones was confronted by an eye witness.

In August 2013, the Department filed a petition requesting that the court assume jurisdiction over JJ, RJ, and GJ. See Petitions dated August 9, 2013 and

August 13, 2013. The children were removed from Jones' care and eventually placed in the care of their fathers. (T 9/16/13, p 17.)

B. Jones entered a plea of admission to the allegations in the child protective petition.

At the preliminary hearing on September 16, 2013, rather than requesting a trial, Jones admitted to some of the allegations in the petition, allowing the trial court to assume jurisdiction of the children (9/16/13 Hr'g Tr, p 8.) At the time, Jones was represented by legal counsel² (9/16/13 Hr'g Tr, p 4.)

Prior to making admissions, Jones and her counsel were given time to review the temporary court wardship petition (9/16/13 Hr'g Tr, pp 5-6.) Jones made the following admissions:

- Jones admitted that in August 2013, she had improperly supervised JJ, RJ, and GJ while at Bond Falls Lake (9/16/13 Hr'g Tr, p 9.)
- Jones admitted she fell asleep while her children were outside the camper, unsupervised, at another camper's campsite (9/16/13 Hr'g Tr, p 15.)
- Jones admitted that sometime in August 2013, RJ was found walking by herself on the sidewalk toward the intersection of the Co-Op in Bruce Crossing from her home on M 28 alone without supervision (9/16/13 Hr'g Tr, pp 10, 13.)
- Jones admitted on another occasion that she did not know that RJ had left the house by herself (9/16/13 Hr'g Tr, p 13.)

² Jones' same legal counsel represented her throughout the entire proceedings in the trial court (8/15/13 Hr'g Tr, p 1; 9/16/13 Hr'g Tr, p 1; 12/16/13 Hr'g Tr, p 1; 3/3/14 Hr'g Tr, p 1; 5/5/14 Hr'g Tr, p 1; 5/22/15 Hr'g Tr, p 1; 6/9/14 Hr'g Tr, p 1; 7/24/14 Hr'g Tr, p 1; 9/15/14 Hr'g Tr, p 1; 9/22/14 Hr'g Tr, p 1; 10/16/14 Hr'g Tr, p 1; 12/1/14 Hr'g Tr, p 1; 12/2/14 Hr'g Tr, p 123; 12/3/14 Hr'g Tr, p 321; 1/8/15 Hr'g Tr, p 1). At no point did Jones or her counsel ever argue that the court did not properly assume jurisdiction of RJ or GJ as to Jones.

- Jones admitted that she grabbed RJ by the hair (9/16/13 Hr'g Tr, pp 15-16.)

Following Jones' admissions, the trial court stated that it was "satisfied" based on Jones' admissions that the court had "jurisdiction over the children" as to her (9/16/13 Hr'g Tr, p 16). Nevertheless, the trial court inquired of all of the attorneys, "Is there any attorney who thinks otherwise?" (9/16/13 Hr'g Tr, p 16.) Jones' legal counsel immediately responded, "**No, Your Honor.**" (*Id.*)

The trial court then scheduled the matter for a dispositional/dispositional review hearing on December 16, 2013 (9/16/13 Hr'g Tr, p 30.) In the interim, the Department was directed to continue providing Jones services in order for her to be reunited with her children (9/16/13 Hr'g Tr, pp 17, 27, 30-31.) The following day on September 17, 2013, the trial court entered an order after the preliminary hearing incorporating Jones' admissions into the order. See Order After Preliminary Hearing dated September 16, 2013.

On December 16, 2013, the court completed an order of disposition. See Appendix A. That order reflected that "an adjudication had been held and the children were found to come within the jurisdiction of the court." (*Id.*)

PROCEEDINGS BELOW

A. Proceedings relating to adjudication (to jurisdiction over the children)

As just noted, the trial court entered its written order of disposition on December 16, 2013, resolving the issue of jurisdiction over the children. Therefore, under MCR 3.993(A)(1) and MCR 7.204(A)(1), Jones had until January 7, 2014 to file her appeal as of right to the court's exercise of jurisdiction. Jones did not file an appeal.

B. Proceedings relating to disposition (to termination of parental rights)

Over the next 395 days, at least 9 review hearings were held. Jones and her legal counsel appeared at each hearing.

Between September 2013 and May 2014, Jones was offered *more* services to address her poor parenting skills and anger, including among other things, anger management classes, psychological evaluation, psychological needs assessment, parenting classes, counseling, services from the Children's Trust Fund, in-home parenting support from Lac Vieux Dessert Social Services bi-weekly, more services from the SMILE Program, parenting aide assistance *two to three times a week*, transportation assistance, guidance for improving her home environment and properly providing for the children from Families First. See Department reports dated from December 2013 until October 2014.

Notably, throughout the statutory review hearings, neither Jones nor her legal counsel *even once* objected to the court's jurisdiction—or asserted that the trial court did not have jurisdiction over the children as to her—or did not have

dispositional authority to enter orders against her because she never intended her admissions to function as a plea (8/15/13 Hr’g Tr ; 9/16/13 Hr’g Tr; 12/16/13 Hr’g Tr; 3/3/14 Hr’g Tr; 5/5/14 Hr’g Tr; 5/22/15 Hr’g Tr; 6/9/14 Hr’g Tr; 7/24/14 Hr’g Tr; 9/15/14 Hr’g Tr; 9/22/14 Hr’g Tr; 10/16/14 Hr’g Tr.) Neither did they ever assert that the trial court had not complied with Michigan Court Rules when it accepted her admissions on the record—*remarkably even when specifically given the opportunity to do so. (Id.)*

At a review hearing in June 2014, the court addressed the issue of whether it had jurisdiction over the children in light of the recent Supreme Court decision addressing the one-parent doctrine. The trial court reasserted that it had jurisdiction over the children as to Jones because “both parents have admitted to the jurisdiction of the Court” (6/9/15 Hr’g Tr, p 5.) Neither Jones nor her counsel objected to this (6/9/14 Hr’g Tr, p 6.) Indeed, her counsel represented to the court that the Department’s recommendations were “appropriate” (7/24/14 Hr’g Tr, p 19.) Further, Jones’ counsel freely acknowledged that Jones needed to make “major improvements” because she “becomes frustrated and defensive, and does not accept offers of assistance or support” (7/24/14 Hr’g Tr, p 20.)

Despite being offered numerous services, Jones missed appointments with her parenting aide and her counselor, refused to take medication prescribed to address her mental illness, presented and verbalized paranoia and oppositional defiant disorder tendencies, and refused direction in parenting RJ and GJ. More troubling still, Jones continued to display loss of emotional control resulting in her

disciplining RJ by pulling her by the hair, running into GJ's leg with a shopping cart, dragging GJ by the leg from the grocery store, and putting tape over both girls mouth for 20 minutes. In September 2014, the Department filed a supplemental petition requesting termination of Jones' parental rights to JJ, RJ, and GJ (9/15/14 Hr'g Tr, pp 6-7, 10-13.) See Appendix B (Dep't Court Report dated October 9, 2014).

A bench trial was conducted on the supplemental petition requesting termination of Jones' parental rights (12/1/14 Hr'g Tr, p 1; 12/2/14 Hr'g Tr, p 123; 12/3/14 Hr'g Tr, p 321; 1/8/15 Hr'g Tr, p 1.) On February 16, 2015, the trial court terminated Jones' parental rights to RJ and GJ. See Opinion Granting/Denying Petition to Terminate Parental Rights, filed February 16, 2015, p 11. The court did not terminate Jones' parental rights to her son JJ, who had remained in the custody of his father, a member of the Bay Mills Indian Community, since the inception of this matter. (*Id.*)

Jones filed a timely appeal challenging the exercise of the trial court's jurisdiction. The Court of Appeals vacated the trial court's best-interest determination and remanded the case, instructing the court to consider in its best-interest determination the option of continuing placement of the children with Jones' aunt and uncle. The Court of Appeals affirmed the trial court's assumption of jurisdiction. The Court of Appeals' well-reasoned decision relied on the binding precedent found in *In re Hatcher*, 443 Mich 426, 438-440; 550 NW2d 834 (1993), *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005), and *In re SLH*, 277 Mich App 662, 668; 747 NW2d 547 (2008).

On November 10, 2015, Jones filed this application for leave to appeal.

ARGUMENT

I. This Court should deny Jones' application for leave to appeal because it does not present any of the grounds enumerated in MCR 7.302(B) necessary for this Court to grant leave.

An application for leave to appeal must be based on the grounds enumerated in MCR 7.302(B). Jones' application for leave to appeal does not merit review by this court because it does not present any of the grounds enumerated in MCR 7.302(B).

MCR 7.302(B)(1) provides that one of the grounds an application for leave to appeal must establish is that the issue involves a substantial question as to the validity of a legislative act. Jones' application challenges the trial court's exercise of jurisdiction as to her. It does not raise a substantial question as the validity of a legislative act. And, although the case is against a state agency—the Department of Health and Human Services—it does not involve issues of significant public interest. MCR 7.302(B)(2). Narrow disputes, which do not affect others besides the individual appellant, do not fall in the category of those having significant public interest. *Gulf Underwriters Ins Co v McClain Industries Inc*, 483 Mich 1010, 1011; 765 NW2d 16 (2009) (Young, J, concurring). This dispute is narrow; it involves the Ontonagon trial court's assumption of jurisdiction over Jones' children on the basis of Jones' admissions of wrongdoing.

The issues do not involve legal principles of major significance to the state's jurisprudence such that this court should grant leave. MCR 7.302(B)(3). Jones' application does not include discernible legal principles, much less legal principles

of major significance. Finally, the Court of Appeals decision is not clearly erroneous. MCR 7.302. The Court correctly applied *Hatcher* because the exercise of that jurisdiction can be challenged only on direct appeal—not several years later, when a direct appeal is available, as was the case here.

Because Jones’ application fails to show any of the grounds listed in MCR 7.302(B), this Court should deny his application for leave to appeal.

II. This Court should deny Jones’ application for leave to appeal because the trial court properly entered a dispositional order when it obtain jurisdiction over Jones.

A. Preservation of Issues

Nowhere in the trial court proceedings below did Jones raise the issue that the trial court did not have dispositional authority to enter order against her; therefore, it is unpreserved. In addition, Jones did not preserve this issue for purposes of appellate review because she failed to file a timely appeal from the December 2013 order of disposition in accordance with MCR 3.993(A)(1) and MCR 7.203(A).

B. Standard of Review

This Court reviews unpreserved claims on appeal for plain error. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

C. Analysis

In this appeal, Jones raises issues relating to the trial court’s exercise of jurisdiction following Jones’ admissions in September 2013. Her argument, challenging the procedure by which RJ and GJ were made temporary wards, necessarily pertains to the adjudicative phase of proceedings and the trial court’s

exercise of jurisdiction over the children. She argues that the trial court did not have dispositional authority to enter an order against her. Yet, she never challenged the December 2013 Order of Disposition. See Appendix A.

In *In re AMAC*, 269 Mich App 533; 711 NW2d 426 (2006), the Court explained the bifurcated nature of protective proceedings:

Child protective proceedings have long been divided into two distinct phases: the adjudicative phase and the dispositional phase. The adjudicative phase occurs first and involves a determination whether the trial court may exercise jurisdiction over the child, i.e., whether the child comes within the statutory requirements of MCL 712A.2(b). During the adjudicative phase, a trial may be held to determine whether any of the statutory grounds alleged in the petition have been proven. * * * If the court acquires jurisdiction over the child, the dispositional phase follows. [*Id.* at 536 (citations omitted); see also *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014); *In re Kanjia*, 308 Mich App 660, 663; 866 NW2d 862 (2014).]

In *In re Bechard*, 211 Mich App 155, 159; 535 NW2d 220 (1995), the Court clarified that when there is a written order taking jurisdiction, *Hatcher* bars collateral attacks on jurisdiction:

The collateral estoppel bar of *Hatcher* can only be raised if, at the adjudicatory stage, there was a written order from which a respondent could appeal. That is, that during the adjudicatory stage of the proceedings, an order must have been entered taking jurisdiction or no duty to appeal can arise following that phase. Specifically, the *Hatcher* opinion states, “Our ruling today severs a party’s ability to challenge a probate court’s decision years later in a collateral attack where a direct appeal was available.” [*Id.* at 159, quoting *Hatcher*, 443 Mich at 444.]

Here, there is a written order of disposition (see Appendix A) that Jones could have challenged that decision, and therefore Jones’ challenge is barred by *Hatcher*.

1. Jones' constitutional due-process rights were not infringed when the court accepted her pleas of admissions.

Jones' arguments dismissing the authority of the court to enter dispositional orders as to her ignores that there was, in fact, an adjudication here—Jones entered a plea of admission to some of the allegations in the petition. Following that adjudication, an order of disposition was entered taking jurisdiction over the children. The order of disposition clearly read, “An adjudication was held and the child(ren) was/were found to come within the jurisdiction of the court.” See Appendix A. Jones could have directly appealed *that* order but failed to do so. See MCR 3.993(A)(1).

MCR 3.993(A)(1) provides that an order of disposition placing a minor under the supervision of the court or removing the minor from the home is appealable by right. Jones did not do so—preferring instead to enter into parent agency service agreements with the Department and participate in court-ordered services during the next 300 days (12/16/13 Hr’g Tr, p 5.) Now, for the first time on appeal, she feigns outrage, disputing the validity of *her own admissions* and the procedure by which the court accepted—and relied on—those admissions, when she never did so in the court proceedings below; and, her counsel indisputably *represented to the court* that Jones’ admissions were sufficient for the court to assume jurisdiction over the children as to Jones (9/16/13 Hr’g Tr, p 16.) Jones should not now be allowed to assign as error on appeal something that her counsel deemed proper at trial, harboring the error as an appellate parachute. *Dresselhouse v Chrysler Corp*, 177 Mich App 470, 477; 442 NW2d 705 (1989).

A trial court obtains jurisdiction over a child as a result of a plea if a respondent makes a plea of admission to the allegations in the child protective petition. *In re SLH*, 277 Mich App at 669. Jones entered a plea to jurisdiction in September 2013 admitting to wrongdoing sufficient to establish that her children came within the provisions of MCL 712A.2(b). Jones did not appeal the dispositional order evincing the court's jurisdiction in December 2013 (when she could have). Jones did not even once raise this issue throughout the trial court proceedings in the following 395 days after the trial court properly concluded it had jurisdiction over the children and could enter dispositional orders against Jones (6/9/15 Hr'g Tr, p 5.) Also see Appendix A.

Jones has had a lengthy history with the Department dating as far back as 2008. Since that time, Jones' children have been in and out of *three counties* protective custody or monitored by the Department due to her neglectful and abusive conduct. Along with their brother JJ, RJ, and GJ have been the subjects of several Department complaints and child protective petitions. Jones is familiar with child protective proceedings. See Opinion Granting/Denying Petition to Terminate Parental Rights, filed February 16, 2015.

The court did not address MCR 3.971(B) and (C) prior to accepting Jones' admissions, but to raise this issue now—more than two years later—when Jones from the inception of this matter in August 2013 until its conclusion in February 2015 was represented by legal counsel is without merit. Both Jones and her legal counsel were given time to review the petition prior to her making admissions. The

court stated it was satisfied based on Jones' admissions that the court had jurisdiction over the children, which implied that Jones gave her admissions knowingly, understandably, and voluntarily. Neither Jones nor her counsel objected to the procedure employed by the court. Then, in June 2014, the court explicitly addressed whether it had jurisdiction over the children as to Jones. Yet, when presented with an opportunity to address the trial court's jurisdiction, neither Jones nor her counsel ever asserted that Jones' admissions were not intended to be a plea *or* that the court did not comply with a court rule. Instead, both accepted that the court had jurisdiction.

To appeal from the exercise of the court's jurisdiction, Jones was required to appeal from the December 2013 order of disposition rather than collaterally attacking jurisdiction two years later after the termination of her parental rights. Jones appealed from the termination order instead of the order of disposition; thus, issues relating to the adjudication of the children in September 2013 are not properly before this Court. Jones now attempts to do what this Court in *Hatcher* prohibited—delay challenges to jurisdictional decisions as long as possible so that decisions of the court would forever remain open to attack, and no finality would be possible.

Furthermore, in September 2013, Jones admitted to allegations in the petition. See Petitions dated August 9, 2013 and August 13, 2013. Consequently, Jones waived any challenge to the sufficiency of the statutory grounds supporting jurisdiction. She is precluded from claiming error in this Court.

2. Jones' reliance on the *Sanders*' line of cases is misplaced.

In the event that this Court concludes that Jones did not waive her right to challenge the court's assumption of jurisdiction based on her plea of admission, any error that may have occurred was harmless. Jones was given notice of the proceedings, an attorney to represent her interests, and a full and fair hearing at which she chose to give admissions in lieu of a trial. Her admissions to the court in the record describing Jones' neglect and physical and emotional abuse of the children clearly demonstrated that there was not a reasonable probability that the outcome of the proceedings, in this case the trial court's exercise of jurisdiction over the children, would have been different. See MCL 712A.2(b)(1) and (2).

Contrary to the claim in Jones' application, both *In re Sanders*, 495 Mich 394, and *In re Kanjia*, 308 Mich App 660, are distinctly different from this case because in those cases there never was an adjudication against the parent. Rather, the trial court relied on the one-parent doctrine. Here, the court properly concluded it had jurisdiction over RJ and GJ based on Jones' admissions of wrongdoing. *In re Bechard*, 211 Mich App at 160. *She had an adjudication*. See Order After Preliminary Hearing dated September 16, 2013 (wherein the court stated the factual basis for its assumption of jurisdiction over the children).

Jones' case is also distinctly different from both *In re Mitchell*, 485 Mich 922; 773 NW2d 663 (2009), and *In re Hudson*, 483 Mich 928; 763 NW2d 618 (2009), also cited in Jones' application, because unlike the respondents in those cases, prior to entering a plea of admission to the allegations in the petition, Jones was represented by legal counsel. After review of the petition and consultation with her

legal counsel, Jones admitted to allegations in the petition (9/16/13 Hr'g Tr, pp 5-6, 9-16.)

Additionally, this case is distinguishable from *In re Wangler/Paschke*, __ Mich __; __ NW2d __ (2015), cited in Jones' application; in that case, this Court reversed the Court of Appeals decision because, unlike in the present case, the trial court there adopted a mediation procedure rather than employing an adjudication. *Again*, Jones had an adjudication. Further, in *Wangler/Paschke*, this Court reversed because it was "unclear" when the trial court "issued its initial dispositional order, which is the first order appealable by right." Not so in Jones' case. The order of disposition here was entered in December 2013. See Appendix A. *Jones failed to appeal that order.*

There was no plain error because Jones was present for every hearing, and was represented at each hearing by legal counsel who was extremely familiar with her case. In this case, Jones admitted to wrongdoing sufficient for the trial court to acquire jurisdiction under MCL 712A.2(b)(1) and (2). Nonetheless, should this Court determine otherwise, this case is not the vehicle to challenge *In re Hatcher*. Jones' case may be remanded to the trial court for another adjudication on the narrower issue, that is, the trial court's non-compliance with MCR 3.971(B) and (C).

III. This Court should deny Jones' application for leave to appeal because the Court of Appeals correctly applied *Hatcher*.

A. Issue Preservation

Jones did not raise challenge *In re Hatcher* in the trial court below; therefore, it is unpreserved.

B. Standard of Review

Appellate court's consideration of unpreserved claims on appeal "is limited to determining whether a plain error occurred." *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007).

C. Analysis

This Court held in *In re Hatcher* that the exercise of that jurisdiction can be challenged only on direct appeal. 443 Mich at 438-444. *Hatcher* held that matters affecting and concerning the court's exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision and not by collateral attack in a subsequent appeal of an order that terminated parental rights. See MCL 600.861(c)(i), MCR 3.993(A)(1) and MCR 7.204(A)(1)(a); see also; *In re SLH*, 277 Mich App at 668 n 11; *In re Gazella*, 264 Mich App at 679-680; *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995). In *Hatcher*, this Court opined:

Generally, lack of subject matter jurisdiction can be collaterally attacked and the exercise of that jurisdiction can be challenged only on direct appeal. *Life Ins Co of Detroit v Burton*, 306 Mich 81 (1943); *Edwards v Meinberg*, 334 Mich 355 (1952).

Where the probate court erroneously exercises its jurisdiction, the error is analogous to a mistake in an information or in binding over a criminal defendant for trial. Such an error can, of course, be challenged in a direct appeal. It cannot, however, be challenged years later in a collateral attack. **If such a delayed attack were always possible, decisions of the probate court would forever remain open to attack, and no finality would be possible.** *In re Adrianson*, 105 Mich App 300, 309 (1981). [443 Mich at 439-440 (emphasis added; parallel citations omitted).]

In reaching the decision as to the validity of the adjudication as to Jones in light of *Hatcher*, the Court of Appeals held that child protection proceedings "have

long been divided into two distinct phases—the adjudicative phase and dispositional phase. See *In re Jones* Court of Appeals decision, No. 326252, dated October 27, 2015. While child protective proceedings are one, continuous proceeding for purposes of the trial court’s continuing authority over the matter, they are divided into two separate phases.³ The first phase can result in a final order of disposition placing a minor under the supervision of the court. This order is appealable by right. See MCR 3.993(A)(1). The second phase can result in a final order terminating parental rights. This order is also appealable by right. See MCR 3.993(A)(2).

Here, the Court of Appeals correctly concluded when reunification services are provided, there could be several years before “termination occurs following the filing of a supplemental petition for termination after the issuance of the initial dispositional order.” (*Id.*) That was the case here. Consequently, in the case at bar, the Court discussed Jones’ challenge to the court’s jurisdiction when she had a direct appeal of the initial dispositional order, via MCR 3.993(A)(1), available to her. The Court of Appeals held:

the adjudication and the final disposition were separated by a lengthy period of attempts at reunification. Because this appeal is from a dispositional order of termination entered after the initial adjudication, respondent is precluded from challenging the trial court’s exercise of jurisdiction in this case. See also *In re Hatcher*, 443 Mich 426, 438-440; 505 NW2d 834 (1993) (stating that an error in the exercise of jurisdiction may be challenged in a direct appeal, but may

³ If jurisdiction is not terminated, the issues in the two phases of the proceedings are different, the standard of proof is different, and the rules of evidence and the right to a jury trial is different. See MCR 3.911; MCR 3.972; MCR 3.973; MCR 3.977.

not “be challenged years later in a collateral attack”). [*In re Jones* Court of Appeals decision, No. 326252, dated October 27, 2015.]

Citing to the long line of cases following the *Hatcher* decision, the Court of Appeals concluded that “[m]atters affecting the court’s exercise of jurisdiction may be challenged only on direct appeal of the jurisdiction decision, not by collateral attack in a subsequent appeal of an order terminating parental rights.” (*Id.*) This Court’s decision in *In re Hatcher* makes clear that the trial court’s exercise of its jurisdiction is not subject to collateral attack, holding: “Our ruling today severs a party’s ability to challenge a [trial] court’s decision years later in a collateral attack where a direct appeal was available.” 443 Mich at 444.

Jones was not denied her right to challenge any errors she believed applied to the court assumption of jurisdiction in this matter. Following her admissions, both she and her legal counsel received the order of disposition, dated December 16, 2013. See Appendix A. At the time that the trial court asserted jurisdiction, Jones had 21 days to seek a review of that decision with the Court of Appeals. See MCR 3.993(A)(1); MCR 7.204. She and her legal counsel made a strategic decision not to do so.

In this case, there was an order expressly taking jurisdiction, and thus, a direct appeal was available to Jones. See Appendix A. Indeed, the presence of this order means this case is quite different from the cases Jones relies on (*In re Sanders*, *In re Kanjia*, and *In re Wangler/Paschke*); in each of those cases, the respondent did not have an order that could be appealed because there was no adjudication against the respondent. Here, in contrast, the trial court’s

dispositional order of December 16, 2013 implicitly encompassed the necessary finding that Jones was responsible for the allegations contained in the initial petition and that RJ and GJ came within the trial court's jurisdiction. In December 2013, Jones had the right to appeal the decision arising from the initial disposition. See MCR 3.993(A)(1). Accordingly, she cannot, now, directly appeal from the order that covered the adjudication—a distinct phase in a child protective proceeding.

It is well established that a respondent in a child protection proceeding cannot collaterally attack the trial court's exercise of jurisdiction in an appeal from a subsequent order terminating the respondent's parental rights. *In re Hatcher*, 443 Mich at 444. Consistent with this Court's ruling in *In re Hatcher*, and contrary to the claim in Jones' application, her challenge—two years later—to the trial court's jurisdiction is a collateral attack because she had a direct appeal available to her. MCR 3.993(A)(1). Jones' claim that a respondent may challenge jurisdiction "at any point in the children protective proceeding" is without merit. During the adjudicatory stage of the proceedings, the trial court entered an order taking jurisdiction, which was a direct appeal available to her *by right*. See Appendix A. Here, unlike in the cases cited in Jones' application, Jones was not denied an adjudication or legal counsel throughout the court proceedings. The collateral estoppel bar of *Hatcher* was properly applied here because, at the adjudicatory stage, there was a written order from which Jones could have appealed. The Court of Appeals correctly applied *In re Hatcher*. Jones did not challenge the dispositional order, and should not now be allowed to collaterally challenge the trial court's

exercise of jurisdiction—years later—once again denying her daughters permanency and stability.

No plain error occurred here.

CONCLUSION AND RELIEF REQUESTED

The Department respectfully requests that this Court deny Jones' application because she was never denied her right to appeal the trial court's jurisdictional decision. Rather, she waived it by not filing an appeal following the entry of the December 16, 2013 order of disposition. The Court of Appeals correctly applied *In re Hatcher*, holding that an error in the exercise of jurisdiction may be challenged in a direct appeal, but may not be challenged years later in a collateral attack. Jones' challenge of the trial court's jurisdiction two years after the court exercised jurisdiction is a collateral attack.

For these reasons, this Court should deny Jones' application for leave to appeal.

Respectfully submitted,

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